

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO: 3:14-CV-56-MOC-DSC**

ARCHER CUMMINS,)
)
Plaintiff,)
)
v.)
)
DUKE ENERGY CAROLINAS, LLC,)
)
Defendant.)

MEMORANDUM AND RECOMMENDATION

THIS MATTER is before the Court on Defendant’s “Motion to Partially Dismiss Plaintiff’s Complaint” (document #3) filed February 11, 2014. Defendant seeks dismissal of Plaintiff’s breach of contract claim.

On February 28, 2014, Plaintiff, through counsel, filed a “Notice of Non-Opposition ...” (document #7), stating that he “has received and reviewed Defendant’s Motion to Partially Dismiss Plaintiff’s Complaint and Memorandum in support and does not oppose Defendant’s motion.” Id.

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1), and this Motion is now ripe for the Court’s consideration.

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that Defendant’s “Motion to Partially Dismiss Plaintiff’s Complaint” (document #3) be **GRANTED** and Plaintiff’s breach of contract claim be **DISMISSED WITH PREJUDICE**.

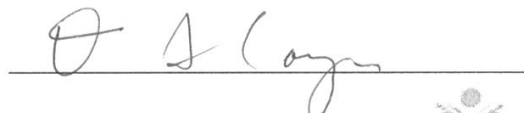
NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. §636(b)(1)(c), written objections to the proposed findings of fact and conclusions of law and the recommendation contained in this Memorandum must be filed within fourteen (14) days after service of same. Failure to file objections to this Memorandum with the District Court constitutes a waiver of the right to de novo review by the District Judge. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir. 1989). Moreover, failure to file timely objections will also preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140, 147 (1985); Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Wells, 109 F.3d at 201; Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Memorandum and Recommendation to counsel for the parties; and to the Honorable Max O. Cogburn, Jr.

SO RECOMMENDED AND ORDERED.

Signed: March 3, 2014


David S. Cayer
United States Magistrate Judge

